

CITIZENS UNITED,
1006 Pennsylvania Avenue, S.E.
Washington, DC 20003,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF COMMERCE,
1401 Constitution Ave NW
Washington, DC 20230,

Defendant.

v.)
)
)
UNITED STATES DEPARTMENT)
OF COMMERCE,)
1401 Constitution Ave NW)
Washington, DC 20230,)
)
)
Defendant.)
)

Plaintiff Citizens United brings this action against Defendant the United States Department of Commerce (“Commerce Department”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges the following:

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

3. Plaintiff Citizens United is a Virginia non-stock corporation with its principal place of business in Washington, D.C. Citizens United is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of

the U.S. Internal Revenue Code. Citizens United seeks to promote social welfare through informing and educating the public on conservative ideas and positions in issues, including national defense, the free enterprise system, belief in God, and the family as the basic unit of society. In furtherance of those ends, Citizens United produces and distributes information and documentary films on matters of public importance. Citizens United regularly requests access to the public records of federal government agencies, entities, and offices, to disseminate its findings to the public through its documentary films and publications.

4. Defendant, the United States Department of Commerce, is an agency of the United States Government and is headquartered at 1401 Constitution Avenue N.W., Washington, D.C. 20230. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. Citizens United routinely submits FOIA requests, and this matter concerns one FOIA request letter submitted to Defendant on March 15, 2018 to which Defendant has failed to respond.

6. On March 15, 2018, Citizens United submitted a FOIA request, online, to Defendant. *See* Exhibit A. The request sought:

- A. All emails between former Commerce Department Deputy Secretary Bruce Andrews and the following individuals: 1. Hunter Biden 2. Christopher Heinz 3. Devon Archer 4. Daniel Burrell 5. David Leiter
- B. All emails between former Commerce Department Chief of Staff Jim Hock and the following individuals: 1. Hunter Biden 2. Christopher Heinz 3. Devon Archer 4. Daniel Burrell 5. David Leiter
- C. All emails between former Commerce Department General Counsel Kelly Walsh and the following individuals: 1. Hunter Biden 2. Christopher Heinz 3. Devon Archer 4. Daniel Burrell 5. David Leiter

The time period covered by the FOIA request was January 1, 2013 to January 20, 2017.

7. Citizens United, as a member of the media, requested expedited processing of this FOIA request.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant is required to respond to Citizens United's FOIA requests within 20 working days of each request.

9. The Commerce Department acknowledged receipt of the FOIA request on the date of its submission, assigning the request Tracking Number DOC-OS-2018-000946. *See* Exhibit B.

10. In an email dated March 16, 2018, Defendant again acknowledged receipt of Citizens United's FOIA request, and reassigned the request Tracking Number DOC-OS-2018-000946. *See* Exhibit B.

11. Defendant sent a separate email on March 16, 2018, informing Citizens United that the request did not warrant expedited processing. *See* Exhibit B.

12. On April 16, 2018, Citizens United submitted an appeal of the denial of expedited processing. *See* Exhibit C. Defendant did not respond to Citizens United's appeal.

13. On April 29, 2018, Defendant changed the Tracking Number back to the original Tracking Number, DOC-OS-2018-000946. *See* Exhibit B.

14. With regard to Citizens United's FOIA request, the statutory deadline has passed, and Defendant has failed to provide a substantive response to the FOIA request. In fact, as of the date of this Complaint, Defendant has failed to produce a single responsive record or assert any claims that responsive records are exempt from production, and it has been over a full year since Defendant sent its acknowledgement.

15. Since Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), Citizens United is deemed to have fully exhausted any and all administrative remedies with respect to its FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

CAUSE OF ACTION
(Violation of FOIA, 5 U.S.C. § 552)

16. Plaintiff realleges paragraphs 1 through 15 as though fully set forth herein.

17. Defendant has failed to make a determination regarding Citizens United's March 15, 2018 FOIA request for records of emails between certain specified individuals (DOC-IO-2018-000946) within the statutory time limit and is unlawfully withholding records requested by Citizens United pursuant to 5 U.S.C. § 552.

18. Citizens United is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Citizens United will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Citizens United requests that the Court grant all appropriate relief for the violations of FOIA alleged above, including:

- a. An order and judgment requiring the Defendant to conduct a search for any and all records responsive to Citizens United's FOIA request and to demonstrate that it employed search methods reasonably likely to lead to the discovery of all records responsive to Citizens United's request;
- b. An order and judgment requiring the Defendant to produce, by a date certain, any and all non-exempt records responsive to Citizens United's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;

- c. An order and judgment permanently enjoining Defendant from continuing to withhold any and all non-exempt records in this case that are responsive to Citizens United's FOIA request;
- d. Attorneys' fees and costs to Plaintiff pursuant to any applicable statute or authority, including 5 U.S.C. § 552(a)(4)(E); and
- e. Any other relief that this Court in its discretion deems just and proper.

/s/ Jeremiah L. Morgan
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CITIZENS UNITED

Dated: May 3, 2019